

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

USS Clamagore SS-343 Restoration And) Case No.: 2019-CP-10- 1950
Maintenance Association, Inc.,
Plaintiff,
vs.
Patriots Point Development Authority,
Defendant.)

SUMMONS
JULIE J. ARMSTRONG
CLERK OF COURT

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TO THE DEFENDANT ABOVE NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint to the subscriber at **Bloodgood & Sanders, LLC, 242 Mathis Ferry Road, Suite 201, Mt. Pleasant, S.C. 29464**, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the Plaintiff will apply to the Court for the relief demanded in the Complaint and a judgment by default will be rendered against you.

BLODDGOOD & SANDERS, LLC

Nancy Bloodgood

Nancy Bloodgood, SC Bar No.: 6459
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242 Mathis Ferry Road, Suite 201
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Attorneys for Plaintiff

Charleston, South Carolina

Date: 4-16-2019

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COMPLAINT

The Plaintiff USS Clamagore SS-343 Restoration And Maintenance Association Inc.,
complaining of the Defendant Patriots Point Development Authority alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff is a 501 (c) (3) non-profit, registered with the Secretary of State of South Carolina operating in the County of Charleston, State of South Carolina. Its mission is to save, relocate to high ground and restore the *USS Clamagore SS 343* (hereafter “*Clamagore.*”) and to preserve the last of her kind of World War II GUPPY III submarines to a condition suitable to serve as a submarine museum and memorial for future generations.

2. Defendant Patriots Point Development Authority is a body politic and corporate under the laws of the State of South Carolina which operates and maintains a naval and maritime museum which includes the *Clamagore*.

3. Plaintiff has standing to bring this action as the issue of whether Defendant has the authority under State law to destroy the *Clamagore*, which is an important historical asset, by allowing it to be turned into a fish reef, is a matter of wide concern and public importance.

4. All actions pertinent to the allegations in this Complaint took place in Charleston County.

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JULIE J. ARMSTRONG
CLERK OF COURT
Association Inc.,
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5. Jurisdiction and venue is proper in this Court.

FACTS

6. The *Clamagore*'s years of service span three wars: WWII, the Korean War and the Vietnam War. It was built during World War II and was decommissioned in 1975. It serves as a fitting memorial to the Navy's submarine service during the Cold War between Western democracies and the Soviet Union and its satellite states.

7. The *Clamagore* offers a unique example of the rugged conditions under which some submariners served.

8. The diesel-powered *Clamagore* was commissioned during World War II. She later patrolled the Caribbean, North Atlantic, and Mediterranean during the Cold War. Nicknamed the "Grey Ghost" of the Florida coast during her service, she is now the last submarine with the Balao-class GUPPY III upgrade.

9. After decommissioning the submarine in 1975, the Navy donated her to the state of South Carolina, and Patriots Point was given the responsibility for the Grey Ghost's maintenance and upkeep.

10. There is an important public interest in retaining ships for educational purposes. Not only do thousands of elementary and high school students visit the *Clamagore* each year, it is still currently used to motivate and educate US Nuclear Power School students.

11. The *Clamagore* has been awarded the "Presidential Unit Citation," "Meritorious Unit Citation," "Naval Unit Commendation," "Vietnam Service Ribbons," "Battle Efficiency Awards," and was designated as a National Historic Landmark on June 29, 1989.

12. The *Clamagore* has significant historical value.

13. Defendant is an instrumentality of the State created pursuant to S.C. Code § 51-13-760 *et seq.* to establish and develop a National Naval museum of ships as “a place of education and recreation to foster among people pride and patriotism in our nation and its heritage.” S.C. Code § 51-13-760 (1).

14. Although Defendant is authorized to perform any act useful toward the development of Patriots Point, S.C. Code § 51-13-790 only permits the removal of structures to other locations if “it is necessary and expedient to do so in order to carry out any of its plans for development under the authorization of this article.”

15. According to Defendant’s “Fact Sheet” on its website, “Patriots Point is the State of South Carolina’s #1 heritage attraction. It is the fourth largest naval museum in the country - and one of only two museums with more than two ships.”

16. This Fact Sheet also states Defendant is one of the largest education and overnight camping programs in the nation, with more than 40,000 school age children attending programs each year; 270,000 visitors each year, and it is the number one heritage attraction in the State.

17. Defendant has a legal responsibility, not only under state law, but also under its contract with the United States to maintain the *Clamagore*. (Exhibit A, Contract.)

18. On August 6, 1979, the United States donated the *Clamagore* to Defendant to be used “on a non-profit basis as a public memorial/museum only... [and] maintain the Vessel in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of this historic Vessel...” (Ex. A, Par. 4.)

19. This contract also precludes Defendant from disposing of the *Clamagore* without the prior consent of the Secretary of the Navy (Ex. A, Par. 9.), which consent upon information and belief, Defendant has failed to obtain.

20. Article 11 of Title 53 of the South Carolina Code does not grant Defendant the right to use ships donated to it such as the *Clamagore*, as fishing reefs, which is the plan most recently proposed by Defendant to the S.C. House Finance Committee.

21. The United States has not granted Defendant the right to turn the *Clamagore* into an artificial reef. On May 30, 2013, the Department of the Navy Naval Systems Sea Command stated in a letter to Defendant regarding the *Clamagore* that “[b]ecause disposal of the vessel constitutes an adverse effect to historic property under NHPA [National Historic Preservation Act] , the Navy cannot grant consent to dispose of the ex-CLAMAGORE until it prepares and environmental assessment (EA) that fully analyzes the disposal action and its potential impacts on the vessel and the environment, as required by the National Environmental Policy Act (NEPA).”

22. On information and belief, Defendant has not performed the necessary EA required by the Navy.

23. Defendant’s failure to properly repair the NS-Savannah after damage caused by Hurricane Hugo required her to be sent to Virginia to be restored. Similarly, the Coast Guard Cutter Ingham was allowed to deteriorate to such an extent by Defendant that she was towed to Key West Florida in 2009 where she is now in the Key West Maritime Memorial Museum.

24. Defendant has a pattern and practice of allowing ships it is required to maintain, to fall into such horrible states of disrepair that they have to be re-possessed and/or rescued and repaired at someone else’s expense.

25. Despite what the Navy told Defendant in May 2013, on May 22, 2015, Defendant adopted a Three Year Business Plan that included three (3) options for the *Clamagore*: 1)

scrapping it, 2) transferring ownership, or 3) assessing the cost of placing the *Clamagore* on a barge at Patriots Point to reduce the risks associated with a major storm event.

26. Defendant's contract with the United States does not give it independent authority to scrap the *Clamagore* or transfer ownership.

27. Rather than pursuing the third option (assessing the cost of placing the *Clamagore* on a barge at Patriots Point to reduce the risks associated with a major storm event), Defendant has tried to raise funds to sell the *Clamagore* to private entities, first for use as a diving attraction and most recently to be used as a fish reef.

28. S.C. Code §10-1-165 clearly states that no World War II, Korean War or Vietnam War memorial erected on public property of the State may be relocated, removed, disturbed or altered.

29. The *Clamagore* is a World War II, Korean War, and Vietnam War memorial.

30. In 2012, the Attorney General interpreted S.C. Code §10-1-165 as it related to S.C. Code § 51-13-760 (which states the purposes of Defendant Authority) and opined, "Clearly, the World War II submarine memorial located on the Cold War Submarine Memorial cannot be removed or relocated." 2010 S.C. AG LEXIS 83, *20-22.

31. Recently, at Defendants request, the State's House Finance Committee proposed that the State's 2019-2020 fiscal year budget include 2.7 million dollars (taken from the Department of Education's budget) for the purpose of turning the *Clamagore* into a fish reef.

32. Defendant's Fact Sheet states it does not receive state funding, yet the 2.7 million dollars needed to destroy the *Clamagore* is in the State's Department of Education budget and S.C. Code § 51-13-760 (5) allows Defendant to accept funds from the State and "use them in such manner, within the purposes of the Authority..."

33. The destroyer USS-Laffey fell into such a dire state of disrepair while at Patriots Point that Defendant finally agreed to allow local volunteers to help repair it, which they successfully did.

34. Plaintiff has similar local volunteers ready and able to raise funds and perform volunteer work on the *Clamagore* to restore and maintain it.

35. Defendant has purposely greatly overestimated the cost of maintaining the *Clamagore*, such as alleging its entire superstructure needs to be replaced, which is false.

36. Detyens Shipyards, Inc. has estimated it will only cost \$300,000 to transport the submarine to North Charleston, dry dock it, clean, repair and preserve the complete hull.

37. Defendant's pattern of allowing ships to fall into disrepair could be repeated with Defendant's other assets of historical significance.

38. Defendant's action of allowing the destruction of an important historical assets could be repeated by other regional authorities as the State has created multiple regional districts, commissions and authorities besides Defendant including Santee-Cooper Counties Promotion Commission (§§ 51-13-210 — 51-13-260); Lake Robinson Recreation Authority (§§ 51-13-410 — 51-13-430); Pendleton District Historical and Recreational Commission (§§ 51-13-510 — 51-13-545); Pee Dee Tourism Commission (§§ 51-13-610 — 51-13-630); Old Abbeville District Historical Commission (§§ 51-13-910 — 51-13-960); Old Ninety Six Tourism Commission (§§ 51-13-1110 — 51-13-1130); Olde English District Commission (§§ 51-13-1610 — 51-13-1630); Old Jacksonborough Historic District (§§ 51-13-1710 — 51-13-1770); Lowcountry and Resort Islands Tourism Commission (§§ 51-13-1810 — 51-13-1830); Enoree River Greenway Commission (§§ 51-13-2000 — 51-13-2030) and the Francis Marion Trail Commission (§§ 51-13-2110 — 51-13-2130).

39. The question of whether authorities of the State such as Defendant can destroy historical and educational assets donated to them is a question of such public importance that it should be decided by this Court for future guidance.

FIRST CASE OF ACTION
**(DECLARATORY JUDGMENT AND REQUEST FOR TEMPORARY AND
PERMANENT INJUNCTIVE RELIEF)**

40. Plaintiff incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

41. This cause of action is brought pursuant to S.C. Code § 15-53-10 *et seq.* and Rule 57 of the South Carolina Rules of Civil Procedure, and there exists a justiciable controversy that is ripe for a decision and is not moot.

42. Defendant has indicated to the Legislature that it intends to strip, destroy, and change the *Clamagore* into a fishing reef.

43. The provisions of S.C. Code § 10-1-165 prohibit the removal of memorials such as the *Clamagore* from public property; S.C. Code § 51-13-760 (1) requires Defendant to establish and develop a naval museum and S.C. Code § 51-13-790 only permits the removal of structures to other locations if “it is necessary and expedient to do so in order to carry out any of its plans for development under the authorization of this article”; and Defendant’s contract with the United States does not give it independent authority to scrap the *Clamagore* or transfer ownership or turn it into a fish reef.

44. Despite state law and existing contracts prohibiting the same, the State Legislature recently earmarked 2.7 million dollars of the Education Department’s 2019-2020 budget to be used by Defendant to strip, destroy, and use the *Clamagore* as a fishing reef.

45. Plaintiff will suffer irreparable damage if Defendant is allowed to have the *Clamagore* stripped and sunk to be used as a fish reef because an important and historic and educational artifact will be destroyed forever.

46. Monetary damages are insufficient compensation to Plaintiff and the public for the loss of a ship that is the last of its kind.

47. Plaintiff is likely to prevail on the legal merits as set forth in this Complaint based on State law and the terms of the contract attached as Exhibit A.

48. Plaintiff seeks to obtain a declaration that Defendant must comply with S.C. Code § 10-1-165; S.C. Code § 51-13-760 (1); and S.C. Code § 51-13-790 by taking what steps Defendant believes are appropriate and necessary to maintain and restore the *Clamagore*.

49. A declaration by this Court would terminate the controversy giving rise to this proceeding.

50. Plaintiff is entitled to, and requests, a declaration from this Court or by the finder of fact that Defendant is required to take appropriate steps under state law to restore the *Clamagore* and maintain it on public property.

51. Specifically, Plaintiff seeks a Court Order in the form of a temporary and permanent injunction requiring Defendant to take appropriate steps to restore the *Clamagore* and maintain it on public property.

Wherefore, having fully stated its Complaint against Defendant, Plaintiff prays for injunctive relief in the form of a declaration by this court as requested herein, attorney fees and costs, and such other legal and equitable relief as the Court deems appropriate.

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Attorneys for Plaintiff

Charleston, South Carolina

Date: 4-16-2019

EXHIBIT A



DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO

CONTRACT N00024-79-C-0204
FOR THE DONATION OF
THE EX-CLAMAGORE (ex-SS-343)

THIS CONTRACT, entered into this 6th day of August 1979 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Department of the Navy, and the State of SOUTH CAROLINA (hereinafter referred to as the "DONEE"), represented by the Patriots Point Development Authority, Patriots Point, Charleston, South Carolina 29402.

WITNESSETH:

WHEREAS, the Act of August 10, 1956 (P. L. 1028, 84th Congress), 10 U.S.C. 7308, authorizes the Secretary of the Navy to transfer by gift or otherwise, on terms prescribed by him, any obsolete vessel of the Navy to any State, municipal corporation of the United States, or any corporation or association whose Charter denies it the right to operate for profit; and

WHEREAS, by an Act of the South Carolina General Assembly (Section 51-91 Code of Laws) the Patriots Point Development Authority was created as an agency of the State to acquire, berth, renovate, equip and maintain historic vessels as part of a State sponsored Naval Museum.

WHEREAS, the DONEE has applied for donation of the obsolete submarine EX-CLAMAGORE (ex-SS-343) (hereinafter sometimes called the "Vessel"), and has indicated its intention to preserve and exhibit the Vessel; and

WHEREAS, the DONEE agrees to and undertakes the obligation to make and keep the Vessel safe and presentable for public exhibition and inspection, at no expense to the Government; and

WHEREAS, pursuant to 10 U.S.C. 7308, notice of the proposed transfer has been duly sent to the Congress, sixty calendar days of continuous session have been expired since then, and no resolution has been passed by the Congress stating in substance that it does not favor the proposed transfer,

NOW, THEREFORE, the Government agrees to transfer the Vessel to the DONEE and the DONEE agrees to accept the Vessel subject to the following terms and conditions:

1. The Government shall, subject to the provisions of Article 14 hereof, deliver the Vessel to the DONEE at the Naval Inactive Ships Maintenance Detachment, Philadelphia, Pennsylvania, on an "as is, where is" basis and without warranty of any kind, and notify the DONEE of the delivery date sufficiently in advance thereof to enable the DONEE to make necessary arrangement for acceptance of delivery.

2. The DONEE shall accept the Vessel upon delivery by the Department of the Navy.
3. The DONEE shall not activate or permit to be activated any system aboard the Vessel for the purpose of navigation or movement of the Vessel under its own power.
4. The DONEE shall establish the Vessel on a non-profit basis as a public memorial/museum only, exhibit it at a suitable site in Charleston Harbor, South Carolina, maintain the Vessel in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of this historic Vessel, and not allow the Vessel to become a menace to navigation, public health or safety.
5. The DONEE shall maintain the Vessel in a condition satisfactory to the Department of the Navy. To that end the DONEE shall install not later than 30 June 1981, a permanent-base mooring arrangement acceptable to the Navy. Pending completion of the permanent-base mooring arrangement, temporary mooring of the Vessel shall be effectuated in a manner and at a site acceptable to the Navy. The maintenance obligations assumed by the DONEE shall include, but shall not be limited to (a) the performance of all necessary painting and cleaning of exterior surfaces and interior compartments and passageways open to the public (b) the provision and maintenance in all public and private spaces of such handrails, warning signs, fire protection systems, lighting and ventilation systems, and other safety devices as are necessary to insure the safety of the visiting public and of maintenance personnel aboard the Vessel, (c) the assurance of the watertight integrity of the hull while the Vessel is afloat, (d) the provision and maintenance of safe and efficient means of access and egress, (e) the provision and maintenance of suitable sanitary facilities ashore for visitors, and (f) such other safety and maintenance work as the Government may determine to be reasonably necessary. All the obligations hereunder shall be performed by the DONEE at its own expense and without reimbursement or contribution by the Government. All work performed hereunder shall be subject to approval of the Commandant, Sixth Naval District.
6. The DONEE shall procure and maintain at its own expense, without reimbursement or contribution by the Government, from and after the delivery of the Vessel, Tower's broad-form liability insurance, including Tower's coverage for negligent damage to the Vessel during any tow and marine hull and protection and indemnity liabilities, all in an amount not less than \$150,000 to cover the Vessel so long as the Vessel is waterborne. Upon completion of the permanent mooring

arrangement, the DONEE shall procure not less than \$150,000 of fire and extended-coverage insurance, including risks of vandalism and malicious mischief, and third-party bodily-injury liability insurance in an amount not less than \$300,000 per occurrence. Such insurance shall at all times protect the United States Government, its agents or employees, from claims resulting or alleged to have arisen from fault, negligence, wrongful act or omission of the Government, its agents or instrumentalities or their agents or employees, in berthing, preparation for use, repairing or any other use, and shall, as to form and insurers, be subject to the approval of the Insurance Section (MAT 08C4N), Naval Material Command, Department of the Navy, Washington, D. C. 20360.

7. The DONEE shall present evidence satisfactory to the Government that, prior to the delivery of the Vessel, the DONEE has the financial means necessary to assure accomplishment of all the obligations hereunder.
8. The DONEE shall prohibit members of the general public from visiting aboard the Vessel prior to the accomplishment of all work necessary to make the Vessel safe and presentable for public inspection, except as may be authorized by the Navy Department.
9. The DONEE shall not transfer or otherwise dispose of the Vessel or any part thereof or any interest therein without the prior consent of the Secretary of the Navy or his duly authorized representative.
10. The DONEE shall indemnify and hold harmless the United States Government, its agents or employees, against all suits, actions, claims, costs, fees, and demands (including, without limitation, suits, actions, claims, costs, fees, and demands for death, personal injury, or property damage) to which the Government, its agents or instrumentalities or their agents or employees, may be subject by reason of damage or injury (including death) to the property or person of anyone resulting or alleged to have arisen or resulted from the fault, negligence, wrongful act, or omission of the Government, its agents or instrumentalities or their agents or employees, in the berthing, preparation for use, repairing, restoration, or any other use of the Vessel originating after delivery of the Vessel to the Donee.
11. The DONEE shall comply with all Federal, State, and local laws and regulations in being or that may be hereinafter enacted or issued relating to protection of the environment, public health, and safety.

12. The DONEE shall submit to the Naval Sea Systems Command (SEA OOD), Washington, D. C. 20362, an annual material inspection report on the condition of the Vessel on or before June 30th of each year that this agreement is in effect.
13. The DONEE acknowledges that it has executed and furnished to the Government representative under this contract, Navy Form NAVSO 5350/1 (11-71) "Assurance of compliance with the Department of Defense Directive under Title VI of the Civil Rights Act of 1964"; that it has read the explanation of the Department of Defense accompanying said Navy form; and that all sanctions imposed and actions taken as a result of non-compliance therewith shall be in accordance with DOD Directive 5500.11, dated December 28, 1968, "Non-Discrimination in Federally Assisted Programs."
14. In the event that the Vessel is lost or destroyed prior to the time of transfer, by fire, shipwreck, act of Providence or of a foreign power, or by any other means whatsoever, whether by negligence on the part of the Government, or not, this Agreement shall become void and of no effect.
15. Upon delivery to and acceptance by the DONEE, title to the Vessel shall vest in the DONEE and title shall remain in the DONEE until transferred under Article 9 or Article 19 of this contract.
16. The Government shall not be liable to the Donee in any manner whatsoever for damages or otherwise on account of delayed delivery or non-delivery of the Vessel or for any other reason.
17. No expense shall result to the Government as a consequence of the transfer of the Vessel to the DONEE or as a consequence of the terms and conditions prescribed hereunder.
18. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Commander, Naval Sea Systems Command, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the DONEE. The decision of the Commander, Naval Sea Systems Command, shall be final and conclusive unless, within 30 days from the date of the receipt of such copy, the DONEE mails or otherwise furnishes to the Commander, Naval Sea Systems Command a written appeal addressed to the Secretary of the Navy. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be

final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith. In connection with any proceeding under this clause, the DONEE shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the DONEE shall proceed diligently with the performance of the contract and in accordance with the decision of the Commander, Naval Sea Systems Command.

19. The Government may, during a national emergency, request the DONEE to return the Vessel and the DONEE shall, if and when requested to do so, return the Vessel to the Government. In the event that the DONEE, or its assigns, shall fail to perform the obligations assumed under this contract, the Secretary of the Navy or his duly authorized representative may terminate this contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this contract has been violated, is transmitted by registered mail to the DONEE. The DONEE shall have ninety (90) days from receipt of the written notice to cure the violations or deficiencies set forth in said notice. If, at the end of such time, it appears to the Secretary of the Navy, or his authorized representative, that the same have not been cured, then the Contract shall be deemed to be terminated, in which event the DONEE shall forfeit to the Government any and all rights that it may have in the Vessel, including rights in any improvements made to the Vessel or fixtures attached by the DONEE, as the Secretary of the Navy or his duly authorized representative may decide, and shall transfer title to the Government if the Secretary of the Navy or his duly authorized representative so directs.
20. The term "Government" as represented by the Department of the Navy means the Secretary, Under Secretary, or Assistant Secretary of the Navy, the Commander, Naval Sea Systems Command, and any other duly authorized representative, acting within the limits of his authority, that the aforedesignated officials may appoint.

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract as of the date first above written.

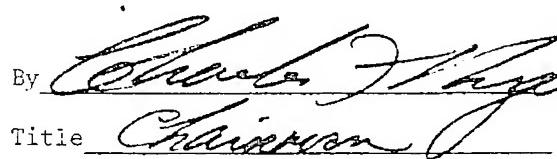
THE UNITED STATES OF AMERICA

By _____



STATE OF SOUTH CAROLINA
Patriots Point Development Authority

By _____



Title Chairman